

Request for Proposals Part B - Contract



Department of Executive Services
Finance and Business Operations Division
Procurement and Contract Services Section
206-263-9400 TTY Relay: 711

Contract Title: Demand-Responsive Transit Service (DART) in King County

RFP Number: 1004-08 PCR

Buyer: Paul Russell, paul.russell@kingcounty.gov , 206-263-9317

King County		Requesting Dept.:	Transportation
Project Manager	<u>Mike Beck</u>		<u>Transit</u>
Contract Number:	<u></u>	Contractor:	<u></u>
Federal Tax ID:	<u></u>		<u></u>
Amount:	<u></u>	Fund Source:	<u></u>
Duration:	<u></u>	To:	<u></u>
Work Provided:	<u></u>		

CONTRACT

THIS CONTRACT, made this ____ Day of _____, 2008, by and between King County, Washington, a home rule charter county and a political subdivision of the State of Washington (hereinafter "County") and _____ with its principal place of business at _____ (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the County has caused Contract documents for:

Contract No.: _____

Contract Title: Demand Responsive Transit Service (DART) in King County

to be prepared for certain Work as described therein; and

WHEREAS, the Contractor has assured the County that it has the specialized expertise and experience necessary to properly Provide the goods and services in a timely manner and that its proposal includes all of the functions and features required for the goods and services; and

WHEREAS, the County has accepted the Contractor's offer to provide the goods and services in accordance with the Contract's terms, Scope of Work and proposal documents; and

WHEREAS, by executing this Contract, the Contractor represents that the waiver of the Contractor's immunity under industrial insurance, Title 51 RCW, as set forth in the Contract documents was mutually negotiated by the parties; and

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to supply the goods and services at the price and on the terms and conditions herein contained, and to assume and perform all of the covenants and conditions herein required of the Contractor, and the County agrees to pay the Contractor the Contract price provided herein for the supply of the goods and services and the performance of the covenants set forth herein.

THE FURTHER TERMS, CONDITIONS AND COVENANTS of the Contract are set forth in the following exhibit parts each of which is attached hereto and by this reference made a part hereof in the following order of precedence: [1] Contract Amendment; [2] the Contract Document which includes: Definition of Words and Terms, Standard Contractual Terms and Conditions, Specific Contractual Terms and Conditions, Insurance Requirements, Scope of Work, and Attachments A) Price, B) Contractor's Insurance Forms; and Exhibits I Preventive Maintenance Checklist, II Route Information, and III Route Maps.

COMPANY NAME

KING COUNTY

Authorized Signature

Authorized Signature

Name and Title (Print or Type)

Name and Title (Print or Type)

Date Accepted: _____

Date Accepted: _____

Approved as to form only: _____

RFP PART B - TABLE OF CONTENTS

DEFINITION OF WORDS AND TERMS5

SECTION 1 STANDARD CONTRACTUAL TERMS AND CONDITIONS.....6

- 1.1 Administration6
- 1.2 Contract Changes6
- 1.3 Termination for Convenience/Default/Non-Appropriation6
- 1.4 Force Majeure.....7
- 1.5 Washington State Sales Tax.....8
- 1.6 Taxes, Licenses, and Certificate Requirements.....8
- 1.7 Assignment8
- 1.8 Indemnification and Hold Harmless8
- 1.9 Applicable Law and Forum9
- 1.10 Conflicts of Interest and Non-Competitive Practices.....9
- 1.11 Disputes, Claims and Appeals10
- 1.12 Mediation and Arbitration10
- 1.13 Retention of Records, Audit Access and Proof of Compliance with Contract10
- 1.14 Other Public Agency Orders11
- 1.15 Recycled Products Policy.....11
- 1.16 Nondiscrimination and Equal Employment Opportunity.....11
- 1.17 Severability13
- 1.18 Nonwaiver of Breach.....14
- 1.19 Equal Benefits to Employees with Domestic Partners14

SECTION 2 SPECIFIC CONTRACTUAL TERMS AND CONDITIONS15

- 2.1 Execution of the Contract.....15
- 2.2 Contract Term15
- 2.3 Service Preparation/Start-up.....15
- 2.4 Notices15
- 2.5 Payment Procedures16
- 2.6 Advance Payment Prohibited.....17
- 2.7 Purchase Orders.....17
- 2.8 Pricing.....17
- 2.9 Fuel Cost Adjustment.....17
- 2.10 Shipping Charges18
- 2.11 Acceptance Process18
- 2.12 Warranty Provisions.....18
- 2.13 Independent Status of Contractor19
- 2.14 Nondisclosure of Data.....19
- 2.15 Non-Disclosure Obligation19
- 2.16 Public Disclosure Requests19
- 2.17 Hazardous Chemical Communication.....20
- 2.18 Industrial and Hazardous Waste.....20

2.19	Changed Requirements	20
SECTION 3	INSURANCE REQUIREMENTS	21
3.1	Evidence and Cancellation of Insurance.....	21
3.2	Insurance Requirements.....	21
3.3	The Contractor shall maintain limits no less than, for:	22
SECTION 4	FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS	24
4.1	Changes in Federal laws, Regulations, Policies and Administrative Practices.....	24
4.2	Federal Changes	24
4.3	No Federal Government Obligations to Third Parties	24
4.4	Equal Employment Opportunity	24
4.5	Title VI Compliance.....	25
4.6	Disadvantaged Business Enterprise Requirements.....	26
4.7	Disadvantaged Business Enterprise and Other Small Business Participation.....	28
4.8	Audit and Inspection of Records	28
4.9	Access Requirements for Individuals with Disabilities	28
4.10	Interest of Members of or Delegates of Congress	29
4.11	Certification Regarding Debarment, Suspension and Other Responsibility Matters.....	29
4.12	Disclosure of Lobbying Activities.....	29
4.13	False or Fraudulent Statements or Claims.....	30
4.14	Energy Conservation	30
4.15	Air Pollution.....	30
4.16	Environmental Requirements.....	30
4.17	Preference for Recycled Products	32
4.18	Termination Provisions Required	32
4.19	Breach Provisions Required	32
ATTACHMENT I	CERTIFICATE OF LOBBYING ACTIVITIES.....	33
ATTACHMENT J	DISCLOSURE FORM TO REPORT LOBBYING	34

DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written Documentation of the County's determination that the Contractor's Work has been completed in accordance with the Contract.

Buyer: Individual designated by the County to conduct the Contract solicitation process, draft and negotiate Contracts, resolves contractual issues and supports the Project Manager during Contract performance.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or Scope of Work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the County and the Contractor for completion of the Work under the Contract as set forth on Page 2 of this document.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the County for the performance of services or Work under the Contract.

Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost Analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

Day: Calendar Day.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration. This Contract may be part of a larger County project.

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

Scope of Work (SOW): A section of the Contract consisting of written descriptions of services to be performed, or the goods to be provided or the technical requirements to be fulfilled under this Contract contained within Scope of Work Section.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include all Software, Hardware and services specified under this Contract, including Contract Amendments and settlements.

SECTION 1 STANDARD CONTRACTUAL TERMS AND CONDITIONS

1.1 Administration

This Contract is between the County and the Contractor who shall be responsible for providing the Work described herein. The County is not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Scope of Work has not been written with this intent.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder. Such personnel shall not be current or former employees of the County without the written approval of the County. Any current or former County employee who is involved, or becomes involved, in the performance of the Contract shall be disclosed; and the County shall determine whether conflicts of interest or ethical violations exist under the circumstances.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be Provided by the Contractor shall be delivered to the Project Manager. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for a response.

1.2 Contract Changes

No oral order or conduct by the County shall constitute a change to the Contract. If any Contract Amendment causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the project schedule, or both shall be made and the Contract and all related purchase orders(s) modified and agreed to in writing by both parties. Every Contract Amendment may require a Cost/Price Analysis to determine the reasonableness of the proposed adjustments to Contract price or schedule. Contract Amendments do not require notice to sureties by County.

Ref: KC CON 7-8-1 (AEP).

1.3 Termination for Convenience/Default/Non-Appropriation

A. Termination for Convenience

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Contractor shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract closeout costs and profit on that portion of the Work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract, applicable laws and regulations.

B. Termination for Default

If the Contractor does not deliver Work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A "Notice to Cure" shall be served on the Contractor by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Contractor shall have ten (10) Days to cure the default or Provide the County with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work delivered and Accepted, or Work performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any Contract Amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The County shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and,
2. The Contractor shall be released from any obligation under this Contract or a related purchase order to provide further Work pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

1.4 Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default.

1.5 Washington State Sales Tax

The County shall make payment directly to the State for all applicable State sales taxes in case the Contractor is not registered for payment of sales taxes in the State of Washington. If the Contractor is so registered, it shall add the sales tax to each invoice and upon receipt of payment from the County, promptly remit appropriate amounts to the State of Washington.

1.6 Taxes, Licenses, and Certificate Requirements

This Contract and any of the Work Provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to Provide the specified goods or services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor and Subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to Provide the Work under this Contract.

1.7 Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

1.8 Indemnification and Hold Harmless

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the goods and/or services Provided by or on behalf of the Contractor. In addition, the Contractor shall assume the defense of the County and its officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such goods and/or services: shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event that the County incurs any judgment, award and/or cost including attorney's fees arising from the provisions of this subsection, or to enforce the provisions of this subsection, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor. In the event of litigation between the parties to enforce the rights under this subsection, reasonable attorney fees shall be allowed to the substantially prevailing party.

1.9 Applicable Law and Forum

This Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract may only be filed and prosecuted in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

1.10 Conflicts of Interest and Non-Competitive Practices

A. Conflict of Interest

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

B. Contingent Fees and Gratuities

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
3. Any Person having an existing Contract with the County or seeking to obtain a Contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current Contracts with the County canceled and shall not be able to bid on any other County Contracts for a period of two (2) years.

C. Disclosure of Current and Former County Employees

To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this transaction may result in the County's denying or terminating this Contract.

3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

Ref: K.C.C. 3.04.015, 3.04.20, 3.04.30, 3.04.035, 3.04.060.

1.11 Disputes, Claims and Appeals

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date in which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section.

The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent to mediation, arbitration or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the County.

1.12 Mediation and Arbitration

If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be resolved by arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle. Nothing in this subsection precludes any party from seeking relief at any time from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

1.13 Retention of Records, Audit Access and Proof of Compliance with Contract

A. Retention of Records

The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access

1. Federal, state or County auditors shall have access to Contractor's and its Subcontractors' records for the purpose of inspection, Cost or Price Analysis, audit or other reasonable purposes related to this Contract. Federal, state or County auditors shall have access to

records and be able to copy such records during the Contractor's normal business hours. The Contractor shall Provide proper facilities for such access, inspection and copying.

2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Contractor and for any other reason deemed appropriate and necessary by the County. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state or County audit procedures, laws or regulations. The Contractor shall fully cooperate with the auditor(s).
3. If an audit is commenced more than sixty (60) Days after the date of final payment for Contract Work, the County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

C. Proof of Compliance with Contract

The Contractor shall, upon request, provide the County with satisfactory documentation of the Contractor's compliance with the Contract.

In addition, the Contractor shall permit the County, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

Ref: KCC 2.20.035, 2.20.040, 2.20.050, RCW 43.09.050, 43.88, 42.40.020, 42.40.040, 42.160.

1.14 Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract if agreeable to all parties. The County does not accept any responsibility or involvement in the purchase orders or Contracts issued by other public agencies.

1.15 Recycled Products Policy

Contractors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

The Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the contract and shall, whenever practicable, use both sides of the paper. (Reference: KCC 10.16 & King County Executive Policy CON 7-1-2).

1.16 Nondiscrimination and Equal Employment Opportunity

A. Nondiscrimination in Employment and Provision of Services

During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Contract.

B. Nondiscrimination in Subcontracting Practices

During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County Contracts or to obtain or compete for Contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with Subcontractors and suppliers, the Contractor shall not discriminate against any Person on the basis of race, color, creed, religion, sex, age,

nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

Ref: KCC 12.16.020.

C. Compliance with Laws and Regulations

The Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination.

Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract.

D. Record-keeping Requirements and Site Visits

The County may, at any time, visit the project site, Contractor's and Subcontractors' offices to review records related to the solicitation, utilization, and payment to Subcontractors and suppliers in compliance with Executive Order 11246 as amended by Executive Order 11375. This provision includes compliance with any other requirements of this section. The Contractor shall Provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for six (6) years after completion of all Work under this Contract, the following:

1. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to Subcontractors and suppliers in this Contract.
2. The Contractor shall make the foregoing records available to the County for inspection and copying upon request. Any violation of the mandatory requirements of the provisions of this subsection shall be a material breach of Contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment.

E. Discrimination In Contracting

King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither Contractor nor any party subcontracting under the authority of this Contract shall discriminate or engage in unfair contracting practices prohibited by KCC 12.17.

F. Small Contractors and Suppliers and Minority and Women Business Enterprises Opportunities - King County encourages the Consultant to utilize small businesses, including Small Contractors and Suppliers (SCSs) and Minority-owned and Women-owned Businesses Enterprises (M/WBEs) in County contracts. The County encourages the Consultant to use the following voluntary practices to promote open competitive opportunities for small businesses, including SCSs and M/WBEs:

1. Inquire about King County's Contracting Opportunities Program. Application materials are available at the following Web-site address:
<http://bdcc.metrokc.gov/bred/Lists/SCS%20Certified%20Contractors/Public%20View1.htm> .
Telephone 206-205-3443, TTY: Relay 711, for more information

The purpose of the King County Contracting Opportunities Program is to maximize the participation of Small Contractors and Suppliers (SCS) using rating points in the award of King County competitively bid contracts for the acquisition of technical services. The

program is open to all firms SCS certified by King County's Business Development and Contract Compliance Office.

A "Small Contractors and Suppliers" (SCS) means that a business and the person or persons who own and control it are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Program is set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industry Classification System and Owners' Personal Net Worth less than \$750K dollars.

A "Certified Firm" means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SCS by the King County Business Development and Contract Compliance (BDCC) office. Information about becoming a Certified Firm, as well as the Directory of Certified Firms, may be obtained by visiting the King County's Contracting Opportunities Program Web-site address: <http://bdcc.metrokc.gov/bred/Lists/SCS%20Certified%20Contractors/Public%20View1.htm> or contacting the BDCC office at 206-205-3443.

2. King County's Directory of Certified Small Contractors and Suppliers (SCSs) as an available resource to identify small businesses. The directory is available on the King County Contracting Opportunities Program Web site at the following address: <http://bdcc.metrokc.gov/bred/Lists/SCS%20Certified%20Contractors/Public%20View1.htm> or contacting the BDCC office at 206-205-3443, TTY: Relay 711.
3. Contact the Washington State Office of Minority and Women's Business Enterprises (OMWBE) to obtain a list of certified M/WBEs by visiting their Web-site at <http://www.omwbe.wa.gov> or by telephone 360-704-1181
4. Use the services of available community organizations, Consultant groups, local assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of small businesses, including SCSs and M/WBEs.

G. Compliance with Section 504 of the Rehabilitation Act of 1973

For all Contracts providing consulting, maintenance, training or other services, the Contractor shall complete a Disability Self-Evaluation Questionnaire, Attachment N. The 504/ADA Disability Assurance of Compliance will cover all programs and services offered (including any services not subject to this Contract) for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 ("ADA"). The Contractor shall complete a 504/ADA Disability Assurance of Compliance within ten (10) Days after receiving written notice of selection. The Contractor shall retain a copy of the completed 504/ADA and submit to the Buyer the original final two (2) signed pages titled "504/ADA Disability Assurance of Compliance", which will be attached to the Contract.

Ref: KCC 12.16.060 D.

1.17 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

1.18 Nonwaiver of Breach

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

1.19 Equal Benefits to Employees with Domestic Partners

Pursuant to Ordinance 14823, King County's "Equal Benefits" (EB) ordinance, and related administrative rules adopted by the County Executive, as a condition of award of a contract is valued at \$25,000 or more, the Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners during the performance of this Contract. Failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

When the contract is valued at \$25,000 or more, the Contractor shall complete a Worksheet and Declaration form for County review and acceptance prior to Contract execution. The EB Compliance forms, Ordinance 14823 (which is codified at KCC Chapter 12.19) and related administrative rules are incorporated herein by reference. They are also available online at:

<http://www.metrokc.gov/procurement/forms/gs.aspx>.

SECTION 2 SPECIFIC CONTRACTUAL TERMS AND CONDITIONS

2.1 Execution of the Contract

The documents constituting the Contract between the County and the Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract documents, they shall take precedence as listed on the Contract, page 2. The date the Contract is countersigned by the County is the Contract effective date. No other act of the County shall constitute Contract award. After Contract award, the County shall issue Purchase Orders detailing the Work to be performed.

The Contract may be executed in counterparts, any of which shall be deemed an original and which shall together constitute one Contract.

2.2 Contract Term

The initial Contract term will include the Start-up period in addition to the full five (5) years of revenue service, which may be extended for an additional two years in one (1) year increments, commencing on the effective date of the Contract and subject to the termination provisions at PART B section 1.3, Termination for Convenience/ Default/Non-Appropriation.

2.3 Service Preparation/Start-up

County anticipates a ninety (90) day period for service start-up. This period commences with award of Contract and ends on the first day of revenue service. This start-up includes activities necessary to begin service on the scheduled start-up date, such as:

- A. hiring and training of employees
- B. obtaining and preparing vehicles, facilities and equipment
- C. arranging telephone lines for accepting customer calls
- D. preparing and programming the computer dispatch/scheduling system for route-specific service
- E. implementing a communication system between vehicles and dispatch office
- F. establishing the vehicle maintenance program
- G. arranging accounting and administration procedures

Start-up charges are those expenses incurred by the Contractor from the date of award through the first day of revenue DART service. Start-up costs shall be identified in the Contractor's proposal.

2.4 Notices

All notices or Documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when delivered to the addresses first set forth below.

For Project Management related notices or Documentation:

KING COUNTY	CONTRACTOR
Project Manager – Mike Beck	
201 S. Jackson St	
Seattle, WA 98104-3856	
206-684-1753	
mike.beck@kingcounty.gov	

For Contract related notices or Documentation contact:

King County Procurement and Contract Services Section	
M.S. CNK-ES-0340	
Chinook Building, 3rd Floor	
401 Fifth Avenue	
Seattle, WA 98104	
Buyer – Paul Russell	
206-263-3917	
paul.russell@kingcounty.gov	

2.5 Payment Procedures

A. Invoices

The Contractor for Work Accepted by the County shall furnish invoices to:

King County
M/S KSC-TR-0426
King Street Center
201 S. Jackson St.
Seattle, WA 98104
Attn: Mike Beck

Important – When a purchase order is issued against this Contract that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery Accepted by the County. All invoices shall include the following information: purchase order number, requester's name and phone number, date of invoice, invoice number and invoice total. For each item in the Contract, provide: item number, quantity, description, Contract price and when applicable provide the manufacture, list price and discounts. For services, invoices shall identify either milestones Accepted, hours worked and Contract hourly rates, or authorized fees.

The County will not be bound by prices contained in an invoice that are higher than those in the currently approved price list or this Contract. If prior acceptance of the higher price has not been done by the County, the invoice may be rejected and returned to the Contractor for a correct invoice.

Failure to comply with these requirements or to provide an invoice in conformance with the contract may delay payment.

B. Payments

Within thirty (30) Days after receipt of an invoice, the County shall pay the Contractor for Accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the Invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the County will make payment directly to the State.

C. Subcontractor Prompt Payment

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract within thirty (30) Days from the receipt of each payment the Contractor receives from the County.

2.6 Advance Payment Prohibited

No advance payment shall be made for the Work furnished by Contractor pursuant to this Contract.

Ref: Article VIII, § 7 of the Washington State Constitution.

2.7 Purchase Orders

Purchase orders shall be issued referencing this Contract number. Purchase order(s) shall define and authorize the Work by the Contractor based on the prices contained in Attachment B. The purchase orders issued by the County may reflect agreed to modification(s) of Contract terms, funding or other matters subject to PART B Section 1-2, Contract Changes.

2.8 Pricing

Prices shall remain firm for the duration of the initial five (5) years of revenue service (see 2.2 Contract Term. Reasonable price changes based on market conditions and price/cost analysis may be made after the initial Contract period for optional years 6 and 7. The County will be open to adjusting only the Contractors' labor rates starting at the beginning of Year 4 of the Contract and each year of the Contract thereafter base on the CPI below.

For Contract price adjustments the Contractor shall supply documentation satisfactory to King County such as documented changes to the Producers Price Index for the commodity, the Consumer Price Index for the Seattle-Tacoma-Bremerton area, or a manufacturer's published notification of price change(s).

King County will evaluate this information to determine if revising the pricing is considered fair and reasonable to the satisfaction of King County. Requests for any such change are to be made in writing to the Buyer in the Procurement Services Division office. A contract amendment issued by the County will institute the price adjustment and establish the effective date for the new prices.

2.9 Fuel Cost Adjustment

In recognition of the difficulty of estimating and anticipating the cost of fuel of the term of this Agreement, the parties agree that, subject to the covenants and procedures set forth in this section, the Contractor's monthly invoice shall include the direct cost of purchasing fuel specifically for the DART service.

- A. The Contractor shall compute and submit as part of the monthly service invoice the fuel cost incurred by the Contractor for that month. The fuel cost shall be based on the cost per gallon multiplied by the actual number of gallons purchased for the operation of the County's DART service. Any fuel credits the contractor is eligible for will be deducted from the monthly invoice.
- B. The Contractor agrees to submit such documentation of actual fuel costs as the County may require, including copies of receipts, charge slips, fuel supplier or vendor names and addresses, vehicular mileage figures, and other data which may substantiate the cost and use of fuel for the service. The County will not be obligated to pay any fuel costs absent such documentation. The Contractor agrees that it shall, to the maximum extent possible, obtain fuel at the lowest price available to the Contractor.

- C. Where practicable the Contractor shall use gas stations under contract with the County or with the State of Washington. Currently the County is using the State of WA Contract. One possibility would be for the Project Manager to provide the Contractor with fuel cards, and pay the fuel directly to the fuel Contractor.
- D. At some point in the future the County may have a group of regional service stations under contract and may, where practical require the Contractor to purchase the gas at these locations.

2.10 Shipping Charges

All prices shall include freight FOB to the designated delivery point. The County shall reject requests for additional compensation for freight charges.

2.11 Acceptance Process

The County may give iterative acceptances as the Work is accomplished either by phase or milestone. The Contractor will give the County “notice of completion” of Work related to a specific milestone following the Contractor’s completion of all such Work in accordance with the payment schedule and delivery requirements in the Contract.

- A. **Acceptance Process.** Upon completion of the milestone deliverables, the Contractor will notify the County and the Acceptance process will commence. Acceptance shall be based on conformance with the milestone guidelines. After notice by Contractor of completion of the milestone, County will issue a written notice of milestone Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining items not in compliance with the deliverable guidelines.
- B. **Correction of Deficiencies Process.** If a deliverable is rejected, Contractor will have a commercially practicable time to correct items documented in the County’s notification of rejection. Following the delivery of Contractors’ notice that the Work has been corrected, the County will issue a written notice of Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining Work not in compliance with the milestone. The project schedule will be adjusted accordingly in the event that a dispute regarding the method or accuracy of the correction causes a delay. If the deliverable(s) fails to comply with the milestone after Contractor’s second attempt to correct the Work and no clear plan can be agreed upon between the County Project Manager and the Contractor’s Project Manager, the County will determine the appropriate corrective actions.

2.12 Warranty Provisions

- A. No Waiver of Warranties and Contract Rights. Conducting of tests and inspections, review of Scope of Work or plans, payment for a Work, or Acceptance or Final Acceptance of the Work by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.
- B. Warranty Term. The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform all requirements of this Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the County. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.
- C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors. The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor’s suppliers, vendors, distributors and Subcontractors. The Contractor

is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

2.13 Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent Contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit, which would accrue, to an employee under chapter 41.06 RCW or Title 51 RCW.

2.14 Nondisclosure of Data

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the express written approval of the County.

2.15 Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

2.16 Public Disclosure Requests

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, Chapter 42.56 RCW (the "Act").

If the Contractor considers any portion of any record provided to King County under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Act. If the County determines that the material is subject to disclosure, the County will notify the Contractor of the request and allow the Contractor ten (10) business days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the County will release the portions of record(s) deemed by the County to be subject to disclosure. King County shall not be liable to the Contractor for

inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET.”

2.17 Hazardous Chemical Communication

In order to comply with WAC 296-62-054 and WAC 296-839, Hazard Communication, the Contractor shall prepare, a Material Safety Data Sheet (MSDS) for all products containing any toxic products that may be harmful to the end user. The MSDS Sheet is to accompany the toxic product(s) to the specified delivery sites.

Include the following information in the MSDS:

- A. Chemical Abstract Service (CAS) numbers for every chemical that is listed in the MSDS.
- B. If the product is actually used diluted, the dilution rate should be so stated in the MSDS and the hazards and corresponding Personal protection, etc. also be listed.
- C. SARA Title 3 chemicals shall be listed with the percentage by weight of the total product.
- D. A statement as to the intended use of the product.

2.18 Industrial and Hazardous Waste

The Contractor shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to a public sewer, private sewer, or side sewer tributary to the metropolitan sewerage system.

Contractor shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

2.19 Changed Requirements

New federal, state and county laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through PART B Section 1.2, Contract Changes.

SECTION 3 INSURANCE REQUIREMENTS

3.1 Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, the Contractor shall file with the County evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the County shall receive notice at least forty-five (45) Days prior to the effective date of any cancellation, lapse or material change in the policy.
- B. The Contractor shall, upon demand of the County, deliver to the County all such policies of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.
- C. Failure to Provide such insurance in a timeframe acceptable to the County shall enable the County to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

3.2 Insurance Requirements

- A. The Contractor shall obtain and maintain the minimum insurance set forth below.
By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form; excepting insurance for professional liability/errors and omissions. Professional liability/errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "Claims Made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Contract.

- B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1. General Liability

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering COMMERCIAL GENERAL LIABILITY.

2. Automobile Liability
Insurance Service form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 “any auto”; or the combination of symbols 2, 8 and 9.
3. Professional Liability
Professional Liability, Errors and Omissions coverage.

In the event that services pursuant to this Contract either directly or indirectly involve or require professional Services, Professional Liability, Errors and Omissions coverage shall be provided.
4. Workers’ Compensation
Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable federal or “Other States” State Law.
5. Employers Liability or “Stop Gap”:
The protection provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the General Liability policy.

C. Minimum Limits of Insurance

3.3 The Contractor shall maintain limits no less than, for:

General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

Automobile Liability: \$5,000,000 combined single limit per accident for bodily injury and property damage.

Stop-Gap Employees Liability \$1,000,000

Professional Liability, Errors and Omissions: \$1,000,000 per Claim and in the Aggregate.

Workers’ Compensation: Statutory requirements of the state of residency.

Employers Liability Stop Gap: \$1,000,000.

A. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions shall be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor’s liability to the County and shall be the sole responsibility of the Contractor.

B. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. Liability Policies:

The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Use the above exact language on the Endorsement Form. (CG 20 10 11/85 or its equivalent)

To the extent of the Contractor’s negligence, the Contractor’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any

insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way.

The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

C. Acceptability of Insurers

Unless otherwise approved by the County:

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies shall fail to meet the above stated requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

D. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. **Insurance coverages Provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.**

E. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable Federal, State and Local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor's compliance with these provisions.

F. Endorsements

Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. **The County requires this Endorsement to complete the Contract.**

SECTION 4 FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

This Contract shall be partially funded by the Federal Transit Administration (FTA). Neither the FTA nor the Federal Government shall be a party to any subagreement nor to any solicitations or request for proposals. This Contract shall be subject to regulations contained in 49 Code of Federal Regulations (CFR) Part 18 and the applicable grant agreement between the County and the FTA. The following provisions include, in part, certain standard terms and conditions required by the U.S. Department of Transportation, whether expressly set forth in the following Contract provisions. All Contractual provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference as are the requirements of the Master Agreement between King County and the U.S. Department of Transportation, including all "flow down" provisions to third party Contractors, Subcontractors and or suppliers. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the FTA terms and conditions.

4.1 Changes in Federal laws, Regulations, Policies and Administrative Practices

New federal laws, regulations, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing federal requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors comply with revised requirements as well.

Ref: FTA Master Agreement MA (10), 10-1-2003, Section 2(c).

4.2 Federal Changes

The Contractor agrees to comply with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the Master Agreement between the County and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to comply shall constitute a material breach of this Contract.

Ref: 49 CFR Part 18 and FTA Master Agreement MA (10), 10-1-2003, Section 2(c).

4.3 No Federal Government Obligations to Third Parties

The Contractor agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who shall be subject to its provisions.

Ref: FTA Master Agreement MA (10), 10-1-2003, Section 2(f).

4.4 Equal Employment Opportunity

In connection with the execution of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor shall take affirmative action to ensure that the hiring of applicants and treatment of employees during employment is conducted without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other

forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all Subcontracts, except Subcontracts for standard commercial supplies or raw materials.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

Ref: Executive Order 11246, as amended by Executive Order 11375; Title VII of the Civil Rights Act, as amended, 42 USC § 2000e; Federal transit laws at 49 USC § 5332; section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623; section 102 of the Americans with Disabilities Act, as amended, 42 USC §§ 12101 et seq.; 29 CFR Part 1630; 41 CFR § 60-1.4.

4.5 Title VI Compliance

The Contractor shall comply with and shall ensure the compliance by all Subcontractors under this Contract with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and the regulations of the federal Department of Transportation, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21, (hereinafter "Regulations") as they may be amended from time to time. The Federal Government and or the County has a right to seek judicial enforcement with regard to any matter arising under Title IV of the Civil Rights Act and implementing regulations.

Ref: 49 CFR Part 21.19.

During the performance of this Contract, the Contractor, for itself, its assignees and successors-in-interest agrees as follows:

- A. Nondiscrimination—49 CFR Part 26. The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation ("USDOT")— assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the County deems appropriate.
- B. Prompt Payment. The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Contract no later than thirty (30) Days from the receipt of each payment the Contractor receives from the County. The Contractor agrees further to return retainage payments to each Subcontractor within thirty (30) Days after the Subcontractor's Work is satisfactorily completed. Any delay or postponement of payment from the above referenced period may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE Subcontractors.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- D. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, King County shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 2. Cancellation, termination, or suspension of the contract, in whole or in part.
- E. Incorporation of Provisions. The Contractor shall include the provisions of paragraphs A through D in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the County or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- F. Contractor's List. Contractor is requested to submit the name, address, DBE/Non-DBE status, annual gross receipts, and age of all Subcontractors and suppliers bidding or quoting on DOT-assisted projects. **Compliance with the requirement to report the Contractor's List information is a matter of responsibility.** Contractor is requested to submit the Contractor's List prior to Contract Work.

4.6 Disadvantaged Business Enterprise Requirements.

- A. DBE Participation. The County has not established a DBE goal for this Contract. In accordance with this section, the County has an overall annual DBE goal of thirteen percent (13%) for FTA assisted projects. However, the County requires that the Contractor report any actual DBE participation on this Contract to enable the County to monitor accurately DBE program compliance.
- B. Reporting Requirement. The USDOT requires that the Contractor report any actual DBE participation on this Contract to enable the County to monitor DBE participation accurately and for reporting purposes.
- C. DBE Eligibility. A DBE means a business certified as a DBE by the Washington State Office of Minority and Women's Business Enterprise (OMWBE).
- D. DBE Listing. A Directory of DBE firms certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available online at the following website address: <http://www.omwbe.wa.gov/directory/directory.htm> Telephone the OMWBE at 360-753-9693. **All DBE firms must be certified by OMWBE.**
- E. Counting DBE Participation. The County will count DBE participation toward its annual overall DBE goal as provided for in 49 CFR 26.55.
1. DBE Contractor. The County will only count the Work a DBE Contractor performs with its own forces as well as the Work performed by DBE Subcontractors with their own work forces.
 2. Joint Venture. When a DBE performs as a participant in a joint venture, King County will only count that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the Work that the DBE performs with its own forces.
 3. Commercially Useful Function. The County will count expenditures to a DBE contractor only for DBEs who perform a commercially useful function on that contract.

- a. DBE performs a commercially useful function when it is responsible for execution of the Work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the Work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself.
 - b. DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds is passed in order to obtain the appearance of DBE participation.
 - (1) A DBE does not perform a commercially useful function if it fails to exercise responsibility with its own work force for at least 30 percent of the total cost of its contract, or the DBE subcontracts a greater portion of the Work of a Contract than would be expected on the basis of normal industry practice for the type of Work involved.
4. Expenditures with DBEs. Expenditures with DBEs for materials or supplies shall be counted as provided in the following:
- a. **Manufacturer.** If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - b. **Regular Dealer.** If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - (1) To be a regular dealer a firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - c. A Person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, as provided in this Section (4)(b), if the Person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or of the cost of the materials and supplies themselves shall be counted.
 - (1) Contract-by-contract basis.
 - (2) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
5. Purchases from a DBE. With respect to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and typical for the services rendered. No part of the cost of the materials and supplies themselves shall be counted.

4.7 Disadvantaged Business Enterprise and Other Small Business Participation

The County encourages Contractors to carry out the following steps to facilitate DBE and other small business participation, which may be either on a direct basis in response to this solicitation or as a Subcontractor to a bidder.

- A. Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) DBE and other small businesses that have the capability to perform the Work of the Contract.
- B. Select portions of the Work to be performed by Subcontractors to increase the likelihood that DBE and other small businesses' goals will be achieved
- C. Provide interested Subcontractors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. Negotiate in good faith with interested DBEs and other small businesses.
- E. Avoid rejecting DBEs and other small businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to obtain DBE and other small business participation.
- F. Make efforts to assist interested DBEs and other small businesses in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- G. Make efforts to assist interested DBEs and other small businesses in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively use the services of available minority/women community organizations, Contractors' groups, local, state, and Federal minority/women business assistance offices; Disadvantaged Business Enterprise and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs and other small businesses.

4.8 Audit and Inspection of Records

In the case of all negotiated Contracts and Contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive proposal procedures, Contractor agrees that the County, the Comptroller General of the United States or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all Work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, Contractor agrees to maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed.

Ref: 49 USC § 5324; 18 CFR Part 18.36 (i); 49 CFR Part 633.17; and FTA Master Agreement MA (10), 10-1-2003, Section 8 (c) and (d).

4.9 Access Requirements for Individuals with Disabilities

The County and the Contractor are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

- A. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- B. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities receiving from Federal Financial Assistance," 49 CFR Part 27;
- C. U.S. Department of Transportation regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- D. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- E. U.S. Department of Justice regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- F. U.S. General Services Administration regulations, "Construction and Alteration of Public Buildings," 41 CFR Subpart 101-19;
- G. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

4.10 Interest of Members of or Delegates of Congress

Pursuant to 41 USC § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from.

4.11 Certification Regarding Debarment, Suspension and Other Responsibility Matters

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by King County. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to King County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

4.12 Disclosure of Lobbying Activities

Contracts in excess of \$100,000 require Attachment I, Certificate of Lobbying Activities, and Attachment J, Disclosure Form to Report Lobbying and Instructions (if appropriate), to be completed and submitted to the County with the proposal, as required by 49 CFR Part 20, "New Restrictions on Lobbying."

The Contractor certifies that it shall not and has not used Federal appropriated funds to pay any Person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment, 31 USC § 1352. The Contractor shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995, codified at 2 USC § 1601 et seq., who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 USC § 1352. Such disclosures are to be forwarded to the County.

The Contractor shall include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

Ref: 49 CFR Part 20, modified as necessary by 31 USC § 1352.

4.13 False or Fraudulent Statements or Claims

The Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the County in connection with this project, the County reserves the right to pursue the procedures and impose on the recipient the penalties of 18 USC § 1001, 31 USC §§ 3729 and 3801 et seq., and/or 49 USC § 5307(n)(1), as may be appropriate. The terms of Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, are applicable to this project.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

4.14 Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 et seq., and 49 CFR Part 18.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

4.15 Air Pollution

The Contractor and suppliers may be required to submit evidence to the Project Manager that the governing air pollution criteria shall be met. This evidence and related documents shall be retained by the manager for on-site examination by FTA.

4.16 Environmental Requirements

The Contractor agrees to comply with all applicable standards, orders or requirements as follows:

A. Environmental Protection

The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, *et seq.*, consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note. FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 *et seq.* and 40 CFR Part 1500, *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

B. Air Quality

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to section 306 of the Clean Air Act, as amended, 42 USC §§ 7401, 7414, et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to include this clause in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Ref: 42 USC § 7606 note; 40 CFR Part 51, Subpart T; 40 CFR Part 85; 40 CFR Part 86; and 40 CFR Part 600.

C. Clean Water

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251, 1368, et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 USC §§ 300h et seq.

The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Ref: 33 USC § 1251.

D. Use of Public Lands

The Contractor agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 USC § 303.

E. Historic Preservation

The Contractor agrees to assist the Federal Government in complying with section 106 of the National Historic Preservation Act, as amended, 16 USC § 470f, Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 USC § 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 USC §§ 469a-1 et seq. involving historic and archaeological preservation as follows:

1. The Contractor agrees to consult with the State Historic Preservation Officer about investigations to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 CFR Part 800, and notifying FTA of those properties so affected.
2. The Contractor agrees to comply with all federal requirements to avoid or mitigate adverse effects on those historic properties.

F. Mitigation of Adverse Environmental Effects

The Contractor agrees that if the Project should cause adverse environmental effects, the Contractor shall take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622.

4.17 Preference for Recycled Products

To the extent practicable and economically feasible, the Contractor agrees to Provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in the United States EPA Guidelines at 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962, and Executive Order 12873.

4.18 Termination Provisions Required

All Contracts and subcontracts in excess of \$10,000 shall contain contractual provisions or conditions that allow for termination for cause and convenience by the County including the manner by which it shall be effected and the basis for settlement.

Ref: FTA Circular 4220.1E § 15.b.

4.19 Breach Provisions Required

All Contracts in excess of \$100,000 shall contain contractual provisions or conditions that shall allow for administrative, contractual, or legal remedies in instances where the Contractor violates or breaches the terms of this Contract, including sanctions and penalties as may be appropriate. The Contractor agrees to include this provisional requirement in all subcontracts in excess of \$100,000 awarded under this Contract.

Ref: FTA Circular 4220.1E, § 15.a.

CONTRACT NO. _____

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee or a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," to the contract administrator.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by § 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Firm: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT J

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing to title 31 USC § 1352. The filing of a form is required for each payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subaward of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 - (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.
(b) Enter the full name, of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the amount of box(es). Check all boxes that apply. If payment is made through in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not an SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.